



Missouri Department of Natural Resources

Clean Water Commission Water Protection Program

Meeting Minutes

November 3, 2003

MISSOURI CLEAN WATER COMMISSION MEETING

November 3, 2004

University Plaza Hotel and Convention Center

333 John Q. Hammons Parkway

Springfield, MO

MINUTES

Present

Thomas A. Herrmann, Chairman, Missouri Clean Water Commission
William A. Easley, Commissioner, Missouri Clean Water Commission
Paul E. Hauser, Commissioner, Missouri Clean Water Commission
Cosette D. Kelly, Commissioner, Missouri Clean Water Commission

Greg Anderson, Department of Natural Resources, Jefferson City, Missouri
Robert Brundage, Newman, Comley & Ruth, Jefferson City, Missouri
Bill Bryan, Attorney General's Office, Jefferson City, Missouri
Loring Bullard, Watershed Committee of the Ozarks, Springfield, Missouri
Dick Champion, City of Independence & Urban Areas Coalition, Jefferson City, Missouri
Jim Clemenson, USEPA, Springfield, Missouri
Jeffrey Corbin, Macon Municipal Utilities, Macon, Missouri
Cindy Davies, Department of Natural Resources, Springfield, Missouri
John DeLashmit, USEPA, Kansas City, Kansas
Cindy DiStefano, Department of Conservation, Columbia, Missouri
Bryan Fawks, Department of Natural Resources, Jefferson City, Missouri
John Fraga, Department of Natural Resources, Jefferson City, Missouri
Peter Goode, Department of Natural Resources, Jefferson City, Missouri
Bob Hentges, MO Public Utility Alliance, Jefferson City, Missouri
Jim Hull, Department of Natural Resources, Jefferson City, Missouri
Matt Keener, Watershed Committee of the Ozarks, Springfield, Missouri
Vern Kincheloe, Macon Municipal Utilities, Macon, Missouri
Marlene Kirchner, Department of Natural Resources, Jefferson City, Missouri
Angel Kruzen, Sierra Club, Mountain View, Missouri
Carrie Lamb, City of Springfield, Springfield, Missouri
Mary Lappin, City of Kansas City, Kansas City, Missouri
Richard Laux, Department of Natural Resources, Jefferson City, Missouri
John Lodderhose, Metropolitan St. Louis Sewer District, St. Louis, Missouri
Barbara Lucks, City of Springfield, Springfield, Missouri
Randy Lyman, City of Springfield Public Works, Springfield, Missouri
Stephen Mahfood, Department of Natural Resources, Jefferson City, Missouri
Kevin Mohammadi, Department of Natural Resources, Jefferson City, Missouri
Tom Moore, Tri-State Engineering, Joplin, Missouri
Susan Myers, Metropolitan St. Louis Sewer District, St. Louis, Missouri
Kevin Perry, REGFORM, Jefferson City, Missouri
Tony Petruska, USEPA, Kansas City, Kansas

Roger Rector, Macon Municipal Utilities, Macon, Missouri
John Reece, Little Blue Valley Sewer District, Independence, Missouri
Debi Richardson, SMSU/SMCOG, Springfield, Missouri
Ted Salveter, City Utilities of Springfield, Springfield, Missouri
Terry Satterlee, Lathrop & Gage, Springfield, Missouri
Candy Schilling, Department of Natural Resources, Jefferson City, Missouri
Becky Shannon, Department of Natural Resources, Jefferson City, Missouri
Phil Schroeder, Department of Natural Resources, Jefferson City, Missouri
Christine Smith, Independence Water Pollution Control, Independence, Missouri
Cynthia Smith, Department of Natural Resources, Jefferson City, Missouri
Sharon Stanley, Cape Girardeau, Missouri
Dennis Stith, Shafer, Kline & Warren, Inc., Macon, Missouri
Scott Totten, Department of Natural Resources, Jefferson City, Missouri
Jim Vandike, Department of Natural Resources, Rolla, Missouri
John Watman, City of Springfield POTW, Springfield, Missouri
Clyde Wilber, Greeley & Hansen, Upper Marlboro, Maryland
R. B. Welty, Cape Girardeau, Missouri
Mary West, City of Moberly, Moberly, Missouri

Call to Order/Introductions

Chairman Herrmann called the meeting to order at approximately 1:12 p.m. and introduced Commissioners Easley, Kelly and Hauser. Commissioners Minton and Perry were absent. Chairman Herrmann then introduced Director of Staff Jim Hull, Assistant Attorney General Bill Bryan, and Secretary Marlene Kirchner.

Approval of September 13, 2004 Clean Water Commission Teleconference Meeting Minutes

Chairman Herrmann asked if there were any additions or corrections to the minutes. Hearing none, Chairman Herrmann entertained a motion to accept the minutes and enter them into record.

Commissioner Hauser made a motion to accept the September 13, 2004 Clean Water Commission Teleconference minutes. Commissioner Easley seconded the motion. All Commissioners and Chairman Herrmann voted yes.

Approval of September 29, 2004 Clean Water Commission Meeting Minutes

Chairman Herrmann asked if there were any additions or corrections to the minutes. Hearing none, Chairman Herrmann entertained a motion to accept the minutes and enter them into record.

Commissioner Easley made a motion to accept the September 29, 2004 Clean Water Commission minutes. Commissioner Hauser seconded the motion. All Commissioners and Chairman Herrmann voted yes.

State Water Plan – 319 Process

Mr. Stephen Mahfood, Director of the Department of Natural Resources, reported to the Commission where the department is going with the State Water Plan and how that might tie into awarding grants under the 319 grant process.

The State Water Plan has a statutory basis in Missouri Law and its focus in the past has been on water quantity related activities. Most of the efforts were centered in the Geological Survey Division with close cooperation of the water protection, environmental and regulatory staff. This next phase of the State Water Plan will be expanded to include water quantity and quality assessment and planning based on watersheds.

Under this plan the department hopes it will be able to provide, to anyone interested in water issues, the information, tools, and resources they will need to continue to protect and make sustainable, the use of water in the state.

It was decided to use the James River Basin as a pilot project watershed. There are multiple non-point source special area land treatment projects that are going on in the basin. Phase one is complete and work is being done on phase two of the TMDL process for the James River Basin. There is a lot of state revolving loan funding for wastewater treatment plant upgrades and soon to be water upgrades in the basin. One of the 319 grants will be recommended for funding to support the James River Basin's partnership efforts to complete a watershed plan. There is strong stakeholder involvement within the watershed as well. This ties in with the start of the State Water Plan efforts by the department.

Mr. Mahfood mentioned at some point placing all of the permits within a watershed on the same schedule once a plan is in place. This will be more effective for the environment and make it easier to do business. This will be used as a template for direction on what's important in the state and what has the most importance for the environment and the economy for citizens. The State Water Plan process will help the department do this.

There is potential for funds from EPA to go toward additional monitoring or assessment. The department is committed as an agency from the budget and staffing standpoint to do the State Water Plan within the current budget. It will be a challenge to determine how to take funding from various aspects of the department and make that work for the right kind of goals and outcomes. Mr. Mahfood hopes to be able to replicate this model process in other watersheds.

Mr. Mahfood plans to put a state steering committee together to choose which watersheds to move to next with the State Water Plan process.

Mr. Mahfood reported on a recent publication entitled, *State of Missouri's Environment: Trends, Challenges and Achievements*. This is an assessment of what's going on

environmentally in Missouri and will be used as a standard on which to base future progress. It shows where the department has been successful and areas where environmental concerns still need to be addressed. All Clean Water Commission members will be getting hard copies of this document. It is also located on the department's web page.

FY05 319 Request for Proposals

Mr. Greg Anderson of the Watershed Protection Section, Department of Natural Resources, reported that each year the department requests proposals for projects addressing nonpoint sources of water pollution for funding under Section 319 of the Clean Water Act. Commissioners were provided with a draft of the FY05 Request for Proposals for review and comment. Staff requests input from the Commission regarding the FY05 process.

EPA has not yet issued guidance for the FY03 319 grant process, so the department plans to proceed the same as last year. Staff would like to encourage more proposals that are eligible for incremental funds, focusing on 303(d) listed waters, a watershed plan and on-the-ground implementation. The other pool of 319 funding is for "base" projects that are generally associated with information, education, monitoring, or demonstrations.

The Commission approved the 2003 319 grant money for staff to set aside funds for development of Watershed-Based Management Plans. The requests for proposals for that new grant program will target 303(d) listed waters that do not currently have watershed plans. Funding will be provided to groups or other eligible entities to write and submit watershed plans that meet the requirements of EPA.

Staff plans to proceed with the traditional solicitation process for the FY05 grant process. If funding allows, staff may request to set aside incremental funds for the purpose of implementing watershed-based plans developed under the new Watershed Planning Grant Program.

Mr. Jim Hull commented the department is just now entering into a number of funding agreements for FY03 319 grant monies that had already been approved by the Commission and also the list of priority funding for FY04 which was approved by the Commission in September.

At the September meeting, the Commission requested a report on the FY03 319 Nonpoint Source Implementation Grants. That information has been provided. The Commission also requested from staff a status report on active projects funded with 319 grant money. That report is being developed at this time and will be mailed to the Commission as soon as it is complete.

Discussion and Decision on Combined Sewer Overflow (CSO) Policy

Mr. Kevin Mohammadi, Chief of the Water Pollution Control Branch, Department of Natural Resources, stated that EPA will not be making a presentation as previously planned.

At the September 29, 2004 Clean Water Commission meeting, the Commission directed staff to bring back a CSO policy that will mirror EPA's. The policy was drafted and shared with the Urban Areas Coalition. Their comments have been incorporated into the draft policy. The document was also shared with the Sierra Club and the Coalition for the Environment. The Coalition for the Environment has not submitted comments, but the Sierra Club submitted comments late.

Mr. Mohammadi shared the draft policy with the Commission. The policy provides a timetable to form a stakeholder group by December 2004, a timetable for providing a proposed rule to the Secretary of State, and interim relief for communities.

Mr. Mohammadi shared comments from the Sierra Club.

Mr. Dick Champion, City of Independence, thanked the department for sharing the draft policy with them. They look forward to working with the department in the future. The City of Independence supports the Urban Areas Coalition's suggested changes and the draft CSO policy.

Ms. Angel Kruzen, Sierra Club, read a letter from Mr. Ken Midkiff, also from the Sierra Club, stating that the Sierra Club is in opposition to any system, which continues to allow CSOs or sanitary sewer overflows to exist.

Chairman Herrmann asked Mr. Mohammadi if the intent of his presentation on the Urban Area Coalition would be to approve the CSO policy?

Mr. Mohammadi replied that is correct.

Chairman Herrmann stated he is concerned about how the policy is to be implemented if the regulations say one thing and the policy says something else?

Mr. Mohammadi replied it has gone through the Attorney General's Office and Ms. Aimee Davenport, an attorney with the Water Protection Soil Conservation Division, Department of Natural Resources. There is a provision in the policy that states communities have to seek a variance from the Clean Water Commission. The variance cannot be permanent because it is time bound.

Mr. Hull commented the policy is an interim process. There will be a discussion on suggested changes to the effluent regulations with stakeholders. Changes to the regulations are not being proposed at this time until it goes through the stakeholder process.

Mr. Bill Bryan stated the policy isn't intended to override the regulations.

Mr. Mohammadi explained there was not enough time to public notice the policy, however, it was shared with stakeholder groups.

Ms. Davenport stated that communities can be working on long term control plans even before the rule is finalized. They will need something in the mean time to be able to keep making progress on their plans. The EPA policy lays out a method by which to create a long term control plan. That is why there is an interim process. The long term control plans are in the preliminary stages of being developed. Staff wanted to have something in place in case the rulemaking process would take longer than anticipated.

Commissioner Hauser made a motion to approve the draft CSO Policy as originally presented. Commissioner Easley seconded the motion. Commissioners Hauser and Easley, and Chairman Herrmann voted yes. Commissioner Kelly voted no.

FY05 Clean Water Intended Use Plan

Mr. John Fraga, Financial Assistance Center, Department of Natural Resources stated the Metropolitan St. Louis Sewer District (MSD) is requesting to substitute the Missouri River Waste Water Treatment Plant (WWTP) projects for the Coldwater WWTP. The Coldwater WWTP project is currently on the Fundable Contingency Project List for \$35,100,000. MSD has requested that the Missouri River WWTP projects replace the Coldwater WWTP project for the same amount of funds. In addition, MSD is requesting that the Missouri River WWTP projects be placed on the fundable list in order that they may participate in the spring 2005 leveraged loan closing.

Staff has reviewed MSD's request. They recommend placement of the Missouri River WWTP projects on the fundable list. They also recommend concurrent with this action, that the Coldwater WWTP project be removed from the Intended Use Plan. Should the Commission approve the request by MSD, staff requests that the Commission allow staff to move the Missouri River WWTP projects to the fundable list for an amount not to exceed \$35,100,000 when funding becomes available.

Commissioner Hauser made a motion to accept the staff request. Commissioner Easley seconded the motion. All Commissioners and Chairman Herrmann voted yes.

Hubble Creek – Cape Girardeau County Variance

Mr. Richard Laux, Permits and Engineering, Department of Natural Resources, reported at the September 29, 2004 meeting, the Commission granted preliminary approval of the variance. Staff public noticed the intention of the Commission to grant approval of the variance. No comments were received. Staff is recommending the Commission approve the variance.

Commissioner Kelly made a motion to approve the variance. Commissioner Hauser seconded the motion. All Commissioners and Chairman Herrmann voted yes.

Use Attainability Analysis (UAA)

Mr. Phil Schroeder, Chief of the Water Quality Monitoring and Assessment Section, Department of Natural Resources reported at the September 29, 2004 Commission meeting, the Commission approved the UAA Protocol with conditions that provisions be made.

Staff brought the final version back to the Commission reviewing the significant changes that were made.

Page 3, Purpose, the following statement was added back into the document “Assist in identifying waters of the state which do no support water contact recreational uses.”

Page 10, Removal of a Use, added a statement to the protocol that says, “unless substituted for another use that has water quality criteria as stringent or more stringent than the original use.”

Page 10, Waters in Populated Areas, replaced “urban waters” with “waters in populated areas.”

In response to a comment from Chairman Herrmann, Mr. Schroeder suggested a phrase that explained the purpose of the Bacterial Data Sheet, Data Sheet C, as a form to record bacterial data when UAAs are conducted on the basis of Criteria 1, 3 or 6. He suggested the phrase be included in the document as a footnote.

Commissioner Hauser made a motion to add the addition to the approved UAA. Commissioner Easley seconded the motion. All Commissioners and Chairman Herrmann voted yes.

Clean Water Commission Operating Procedures

Mr. Jim Hull reported he has previously discussed these procedures with the Commission. These procedures came from a Core Commissioners Workgroup that was created by the department. The procedures are for Commissions and Boards that assist the department in environmental matters in how they conduct their business. The policy is tailored to the Clean Water Commission. The Commission had no suggested comments or changes to the procedures.

Commissioner Hauser made a motion to approve the draft Clean Water Commission Operating Procedures. Commissioner Kelly seconded the motion. All Commissioners and Chairman Herrmann voted yes.

Pioneer Steakhouse and Saloon Appeal

Mr. Bill Bryan stated this is a case where the hearing officer has reached a recommended decision. Mr. Robert Young of the Pioneer Steakhouse and Saloon contacted Mr. Bryan that he

was unable to attend today's meeting. Since there appears to be no impact to the waters of the state, Mr. Bryan told him it would be continued to the next Commission meeting in January.

Permit Fee Update

Mr. Peter Goode, Chief of Permits and Engineering, Department of Natural Resources, reported at the last Commission meeting that Commissioners had questions regarding refunds of fees for permit applications that had exceeded statutory guidelines. Mr. Goode explained the refund process.

The types of different refunds are for exceeding statutory deadlines for issuing permits, overpayment, double payment, permit not needed/incorrect permit applied for, and application withdrawal.

Between Fiscal Years 2002 and 2005 there has been a total of 54 statutory refunds totaling \$35,470. Statutory deadlines are 180 days for individual permits and 60 days for general permits. The department is required to refund those fees within 45 days. If it's not done within 45 days, the fees begin accruing interest.

The permit writer completes the refund form including the reason for the refund. The supervisor approves it, and then it's sent to the NPDES Permit and Engineering Section Chief for approval. The refund is processed in 10-15 working days.

There are approximately 12,000 active permits in the state right now.

Chairman Herrmann questioned the Impact Statement for 7.015 and 7.031 that both of them based the cost of the combination of private and public treatment works at 911. He asked how that compares to 12,000?

Mr. Phil Schroeder offered to send Chairman Herrmann information from the department's database, which will break out the numbers.

Budget and Legislative Discussion

Mr. Jim Hull reported he is working to stay within the program's allocated number of FTE's and money. There are a number of vacancies in the program but there is not enough money to fund all of them.

The program's core budget request has been submitted to the department.

Public Comment and Correspondence

Mr. R. B. Welty referred to a letter he received from Mr. Jim Hull on behalf of the Commission that they would take no further action on his complaint.

Mr. Bill Bryan responded that program staff looked into the facts of the situation and the Attorney General's Office looked into the legal issues surrounding it, and brought that

information to the Commission. After reviewing the information, and determining their priorities they have, they elected not to pursue this case any further.

Mr. Bryan encouraged Mr. Welty to share any information that has not already been provided. Mr. Welty gave Mr. Bryan some additional information. Mr. Bryan responded by stating he will look it over and let him know the Commission's response.

Other

Mr. Jim Hull reported that staff is writing the process for the water quality rulemaking.

The Regulatory Impact Report (RIR) is out for public comment on the department's website for 60 days. The public comment period ends December 15. Comments will be brought back to the Commission in January seeking their approval to go forward with that rulemaking and file the proposed rule.

Staff is still meeting internally with stakeholders to address comments that were made on the Stream Classification Guidelines. That will be finalized and brought to the Commission in January.

There was a stakeholder meeting on the Concentrated Animal Feeding Operation (CAFO) Regulations. They are still waiting on written comments. When received, staff will discuss them internally to decide if they need to hold additional stakeholder meetings, or begin the rulemaking process, to make those proposed changes to the CAFO Regulations in order to bring them in line with the federal CAFO requirements. They will still have to do the RIR report prior to filing that proposed rule. The earliest they will be able to file a proposed rule change may be early spring.

Staff are addressing internally how to streamline the Water Quality Review Sheets process, the actual discharge limits that are placed in the permits, in a timely fashion. The department is looking to provide some training to consultants and department staff who currently do not process Water Quality Review Sheets. They are doing that in conjunction with the American Council of Consulting Engineers that are located in Jefferson City.

Chairman Herrmann mentioned the draft copy of use designations. The Village of Ludlow submitted a variance application. Looking at the classification for Shoal Creek, to which the village was discharging, it was classified for drinking water supply. It was stated at a previous Commission meeting that Chillicothe takes drinking water supply from Shoal Creek. Chairman Herrmann made reference to the document *Census of Missouri Public Water Systems*. It shows Chillicothe is on total subsurface supply. They have no surface well water supply. The Bourbeuse River is classified for drinking water supply.

Jim Hull responded that this chapter of the regulations will be open once staff gets to the point of proposing the Water Quality Standard Rule revisions. If comments are submitted during the public comment period, to make needed corrections, and they were not being used as a public drinking water source prior to the passage of the Clean Water Act, then staff can make these corrections.

Mr. Phil Schroeder will go back and do some research on the history of drinking water sources.

Future Meetings

The next Clean Water Commission meeting is scheduled on January 5, 2005. It was decided to hold the meeting in Columbia, Missouri. The March 2, 2005 Commission meeting will be held in Hannibal, Missouri.

Respectfully submitted,

Jim Hull
Director of Staff